

SS SCS SB 689 -- CRIMES AGAINST THE ELDERLY AND DISABLED

SPONSOR: Engler (Schad)

COMMITTEE ACTION: Voted "do pass" by the Committee on Crime Prevention and Public Safety by a vote of 11 to 1.

Currently, a person commits the crime of elder abuse in the second degree, a class B felony, if he or she recklessly and purposely causes serious physical injury to a person 60 years of age or older or an adult with a disability. This substitute revises the provision so that a person will be guilty of the crime if he or she recklessly or purposely causes serious physical injury.

The substitute revises the crime of financial exploitation of an elderly or disabled person to include if a person knowingly by undue influence obtains control over an elderly or disabled person's property with the intent to permanently deprive the person of the use, benefit, or possession thereby benefitting the person or detrimentally affecting the elderly or disabled person. As used in these provisions, "undue influence" means the use of influence by someone who exercises authority over an elderly or disabled person in order to take unfair advantage of that person's vulnerable state of mind, neediness, pain, or agony and includes the improper or fraudulent use of a power of attorney, guardianship, conservatorship, or other fiduciary authority.

The substitute specifies that it is unlawful for any person receiving or in possession of funds of a Medicaid eligible elderly or disabled person residing in a licensed facility to fail to remit to the facility all moneys owed to the facility resident from any source. The Family Support Division within the Department of Social Services is authorized to release information from its records containing the resident's income or assets to any prosecuting or circuit attorney for the purposes of investigating or prosecuting any suspected violation of these provisions. The prosecuting or circuit attorney, upon successful prosecution, may request the circuit court to order, as a condition of sentence and/or probation, restitution of all amounts unlawfully withheld from a facility. Any order of restitution must provide that 10% of any restitution amount paid must be paid to the prosecuting or circuit attorney successfully prosecuting the violation to compensate for the costs of prosecution with the remaining amount to be paid to the facility.

FISCAL NOTE: No impact on state funds in FY 2013, FY 2014, and FY 2015.

PROPONENTS: Supporters say that the factor of undue influence is

not addressed in the current crime of financial exploitation. This type of behavior happens frequently, especially when a person has power of attorney over an elderly or disabled person and uses his or her money for personal gain and not for paying for the person's care. The 10% compensation to a prosecutor is good because it's an important mechanism for actually encouraging the recovery of these funds.

Testifying for the bill were Senator Engler; Department of Health and Senior Services; Missouri Health Care Association; Missouri Assisted Living Association; and LeadingAge Missouri.

OPPONENTS: There was no opposition voiced to the committee.